

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

51058

FILE: B-184847

DATE: September 25, 1975

MATTER OF: Hoff Lumber Company

97408

DIGEST:

Where contractor agreed with Forest Service (FS) to termination of timber sale contract which lacked termination for convenience clause, after it was determined that cutting timber would be detrimental to environment, on condition he be reimbursed for out-of-pocket expenses, settlement is approved since authority to terminate in these circumstances has long been recognized by courts and our Office. Concomitant with settlement, FS should obtain binding release with respect to any future claims.

This is a request by the Deputy Assistant Secretary of the Department of Agriculture that our Office concur with its recommendation for the proposed settlement for the termination of timber sale contract No. 01028-8, dated May 10, 1972, awarded to Hoff Lumber Company by the Forest Service, Boise National Forest Office.

The record discloses that, subsequent to the award and formal execution of the contract, but prior to any actual timber cutting thereunder by the company, representatives of the Forest Service determined that to permit the company to perform the contract in the designated sale area would have a detrimental effect on the environment.

The District Forest Ranger maintains that the timber sale contract was not fully evaluated in regards to the adverse effect that it would cause. The timber to be cut is at elevations above 7,000 feet. At this elevation the soil is extremely thin and removal of the forest canopy would create very dry conditions. There are wet, boggy areas that would be altered because of the timber removal. This would, in turn, destroy the elk wallows. A flood in June 1974 destroyed a bridge which would have to be replaced if the logging were allowed. The Forest Service has determined that the benefits to be gained do not outweigh the adverse effect the logging would have on the environment.

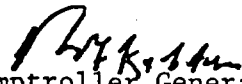
By letter of May 19, 1975, the contractor proposed a settlement in the amount of \$1,495. The proposed settlement consists

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of the following out-of-pocket expenses incurred by the contractor: a deposit of \$1,200 representing the first payment toward the total sale price, interest the contractor has paid to obtain the bid deposit, and the cost of maintaining the required performance bond from the contract date to the date of settlement.

Timber sale contract No. 01028-8 does not contain any provision authorizing the Government to terminate the contract in the public interest without the consent of the purchaser. The authority of a contracting agency of the Government to terminate a contract for the Government's interest and to enter into an agreement with the contractor for the settlement of his claims arising out of such termination has long been recognized by the courts and by our Office. 44 Comp. Gen. 466, 468 (1965); United States v. Corliss Steam-Engine Company, 91 U.S. 321 (1875).

We recommend that, concomitant with the settlement, the Forest Service obtain an effective and binding release from the Hoff Lumber Company with respect to any future claims arising out of the contract termination.


Deputy Comptroller General
of the United States